

FILED

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**Board of Vocational Nursing
and Psychiatric Technicians**

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8
9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2011-4540

13 **ELLEN LOUISE BRUNN**
221 Wisconsin Avenue
14 Oceanside, CA 92054

A C C U S A T I O N

15 **Vocational Nurse License No. VN 116988**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
22 Technicians, Department of Consumer Affairs.

23 2. On or about August 24, 1983, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Vocational Nurse License Number VN 116988 to Ellen Louise Brunn
25 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on January 31, 2015, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws.

All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Business and Professions Code (Code) section 118, subdivision (b), states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

6. Section 2892.1 of the Code states, in pertinent part:

Except as provided in Sections 2892.3 and 2892.5, an expired license may be renewed at any time within four years after its expiration upon filing of an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees, and payment of any fees due pursuant to Section 2895.1.

...

STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

...

(b) Considering suspension of a license under Section 490. Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

...

///

1 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related
3 to the qualifications, functions or duties of a licensed vocational nurse.

4 9. Section 493 of the Code provides, in pertinent part, that the record of conviction of a
5 crime shall be conclusive evidence of the facts that the conviction occurred, but only of that fact,
6 and the board may inquire into the circumstances surrounding the commission of the crime in
7 order to fix the degree of discipline or to determine if the conviction is substantially related to the
8 qualifications, functions, and duties of the licensee in question.

9 10. Section 2878 of the Code states:

10 The Board may suspend or revoke a license issued under this chapter [the
11 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the
12 following:

13 (a) Unprofessional conduct, which includes, but is not limited to, the
14 following:

15 (d) Violating or attempting to violate, directly or indirectly, or assisting in or
16 abetting the violation of, or conspiring to violate any provision or term of this chapter.

17 ...

18 (f) Conviction of a crime substantially related to the qualifications, functions,
19 and duties of a licensed vocational nurse, in which event the record of the conviction
20 shall be conclusive evidence of the conviction.

21 ...

22 11. Section 2878.5 of the Code states, in pertinent part:

23 In addition to other acts constituting unprofessional conduct within the
24 meaning of this chapter [the Vocational Nursing Practice Act] it is
25 unprofessional conduct for a person licensed under this chapter to do any of
26 the following:

27 (a) Obtain or possess in violation of law, or prescribe, or except as
28 directed by a licensed physician and surgeon, dentist or podiatrist administer
29 to himself or herself or furnish or administer to another, any controlled
30 substance as defined in Division 10 of the Health and Safety Code, or any
31 dangerous drug as defined in Section 4022.

32 ...

33 (c) Be convicted of a criminal offense involving possession of any
34 narcotic or dangerous drug, or the prescription, consumption, or
35 self-administration of any of the substances described in subdivisions (a) and
36 (b) of this section, in which event the record of the conviction is conclusive
37 evidence thereof.

1 12. Code section 2878.6 states:

2 A plea or verdict of guilty or a conviction following a plea of nolo contendere
3 made to a charge substantially related to the qualifications, functions and duties of a
4 licensed vocational nurse is deemed to be a conviction within the meaning of this
5 article. The board may order the license suspended or revoked, or may decline to
6 issue a license, when the time for appeal has elapsed, or the judgment of conviction
7 has been affirmed on appeal or when an order granting probation is made suspending
8 the imposition of sentence, irrespective of a subsequent order under the provisions of
9 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty
10 and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing
11 the accusation, information or indictment.

8 REGULATORY PROVISIONS\

9 13. California Code of Regulations, title 16, section 2521, states, in pertinent part:

10 For the purposes of denial, suspension, or revocation of a license
11 pursuant to Division 1.5 (commencing with Section 475) of the Business and
12 Professions Code, a crime or act shall be considered to be substantially
13 related to the qualifications, functions or duties of a licensed vocational
14 nurse if to a substantial degree it evidences present or potential unfitness of
15 licensed vocational nurse to perform the functions authorized by his license
16 in a manner consistent with the public health, safety, or welfare. Such crimes
17 or acts shall include but not be limited to those involving the following:

18 ...

19 (c) Violating or attempting to violate, directly or indirectly, or
20 assisting in or abetting the violation of, or conspiring to violate any
21 provision or term of Chapter 6.5, Division 2 of the Business and Professions
22 Code.

23 ...

24 (f) Any crime or act involving the sale, gift, administration, or
25 furnishing of "narcotics or dangerous drugs or dangerous devices" as defined
26 in Section 4022 of the Business and Professions Code.

27 14. California Code of Regulations, title 16, section 2522 states, in pertinent part:

28 When considering . . . b) the suspension or revocation of a license on
the ground that a licensee has been convicted of a crime, . . . the Board in
evaluating the rehabilitation of an individual and his or her present eligibility
for a license, will consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crime(s) under
consideration.

(2) Actual or potential harm to the public.

(3) Actual or potential harm to any patient.

- 1 (4) Overall disciplinary record.
- 2 (5) Overall criminal actions taken by any federal, state or local agency
3 or court.
- 4 (6) Prior warnings on record or prior remediation.
- 5 (7) Number and variety of current violations.
- 6 (8) Mitigation evidence.
- 7 (9) In case of a criminal conviction, compliance with terms of
8 sentence and/or court-ordered probation.
- 9 (10) Time passed since the act(s) or offense(s) occurred.
- 10 (11) If applicable, evidence of proceedings to dismiss a conviction
11 pursuant to Penal Code section 1203.4.
- 12 (12) Cooperation with the Board and other law enforcement or
13 regulatory agencies.
- 14 (13) Other rehabilitation evidence.

14 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

15 15. Hydrocodone is a Schedule II controlled substance as designated by Health and
16 Safety Code section 11055(b)(1)(J), and is a dangerous drug pursuant to Business and Professions
17 Code section 4022. Hydrocodone is a narcotic pain reliever.

18 **COST RECOVERY**

19 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licensee found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(August 2, 2012 Criminal Conviction for Possession of Hydrocodone a Controlled Substance and Reckless Driving on April 26, 2012)**

25 17. Respondent is subject to disciplinary action under Code sections 490 and 2878,
26 subdivisions (a) and (f), in that Respondent was convicted of a crime that is substantially related
27 to the qualifications, functions, and duties of a vocational nurse. The circumstances are as
28 follows:

1 a. On or about August 2, 2012, in the criminal proceeding entitled *People of the*
2 *State of California v. Ellen Brunn*, in San Diego County Superior Court, Case No. CN 305977,
3 Respondent was convicted on her plea of guilty of violating Health and Safety Code section
4 11350 subsection (a), possession of hydrocodone a felony and Vehicle Code section 23103.5,
5 reckless driving, a misdemeanor. As a result of a plea bargain, additional counts for violation
6 Vehicle Code section 23152(a), driving under the influence, violation of Health and Safety Code
7 section 11364.1(a), possession of a hypodermic needle, and violation of Business and Professions
8 Code section 4060 possession of controlled substances without a prescription, were dismissed.

9 b. As a result of the above conviction, the Court placed Respondent on three years
10 formal probation and ordered that she serve two days in the San Diego County Jail, with two days
11 credit for time served. The Court also ordered that Respondent to pay \$2,045.00 in fines and
12 court costs, and submit to a search of her person or property whenever requested by law
13 enforcement.

14 c. The circumstances that led to the conviction are that on April 26, 2012, at
15 approximately 9:10 p.m., a California Highway Patrol Officer witnessed Respondent's vehicle
16 driving southbound on the I-5 freeway near Camp Pendleton. Respondent's vehicle was
17 travelling at sustained speeds of over 90 miles an hour through heavy traffic and aggressively
18 switching between lanes 1-4 to maintain her speed. The officer pulled over Respondent's vehicle
19 and made contact with Respondent who was seated in the driver's seat. The officer noticed
20 Respondent's objective signs of intoxication including red watery eyes and slurred speech.
21 Respondent admitted to consuming alcohol earlier that day. The officer determined that
22 Respondent was intoxicated and arrested her on suspicion of DUI. A search of Respondent's
23 vehicle and purse found a hypodermic needle and Hydrocodone pills.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct - Conviction of a Drug or Alcohol Related Crime)**

26 18. Respondent is subject to disciplinary action under Code section 2878.5 subsections
27 (a) and (c) in that she was convicted of possession of narcotics a crime that is more fully detailed
28 at paragraphs 17, above, which is incorporated here by reference.

1 **DISCIPLINARY CONSIDERATIONS**

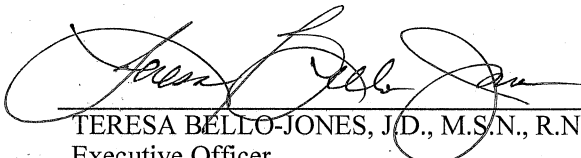
2 19. To determine the degree of discipline, if any, to be imposed on Respondent for the
3 violations alleged above, pursuant to California Code of Regulations, title 16, section 2522(5),
4 Complainant alleges that on or about October 17, 2006, Respondent was found guilty of violating
5 Vehicle Code section 23152 (a), driving under the influence. Respondent was sentenced to three
6 years probation and sentenced to 180 days in jail, the sentence was suspended pending probation
7 and Respondent was ordered to pay \$1,800 in fines.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
11 issue a decision:

- 12 1. Revoking or suspending Vocational Nurse License Number VN 116988, issued to
13 Ellen Louise Brunn;
- 14 2. Ordering Ellen Louise Brunn to pay the Board of Vocational Nursing and Psychiatric
15 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19 DATED: **FEB 21 2013**

20 
21 TERESA BELLO-JONES, J.D., M.S.N., R.N.
22 Executive Officer
23 Board of Vocational Nursing and Psychiatric Technicians
24 Department of Consumer Affairs
25 State of California
26 Complainant

27 SD2012704667